IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 6499 OF 2007

Bhagwat Ramchandra Chaudhari
since deceased through L.Rs.
Smt. Chandrakala Bhagwat Chaudhari
and others .... Petitioner

versus

Smt. Sitabai Narayan Beturkar & ors..... Respondent.

Shri P.M.Pradhan for the petitioner
Shri R.S.Apte i/b Girish Paryani for Respondent no.6.
Shri A.A.Garge for Respondents 1,2,2A,2B,2C & 4.

CORAM; A.P. DESHPANDE, J.
DATED; 10TH OCTOBER, 2007

P.C.;

1. The petitioners are legal representatives of the original plaintiff. The Plaintiffs instituted a suit for specific performance of contract and described the suit plot in the plaint. The plaintiff expired during the pendency of the suit and his legal representatives are brought on record. At a later point of time, the legal representatives moved an application for amendment of the plaint, acting on the basis of a Court Commissioner's report. The report of the Court Commissioner suggests that the property described in the plaint does not exist. Whereas the suit property according to the Court Commissioner would be comprised in survey no.26, Hissa No.6 instead of survey no.28, Hissa no.4. The plaintiff thus moved an amendment

application making an alternative prayer that in the event it is not possible to grant a decree for specific performance in relation to the plot described in the plaint comprised in survey No.28 Hissa no.4, then in the alternative a decree be passed in regard to a plot of land from survey no. 26 Hissa No.6, of equivalent area of plot of land. The trial court has rejected the said application and aggrieved thereby this petition has been filed.

2. The trial court has found that the granting of the amendment would be futile as the suit goes to seek specific performance in regard to a property which is differently described in the plaint. It is doubtful as to whether in law such an alternative prayer is capable of being made. The court has found that the plaintiff cannot seek specific performance in relation to a property in regard to which there has been no contract between the parties.

3. Perused the order, The same does not call for any interference as no patent illegality is shown to have been committed by the trial court. In the result, the writ petition is devoid of any merit and is summarily dismissed.

....